

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES & EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	ORDER ADOPTING REPORT
	:	AND RECOMMENDATION
– against –	:	
	:	23-CV-3309 (AMD) (TAM)
LEE COHEN,	:	
	:	
Defendant.	:	

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ANN M. DONNELLY, United States District Judge:

The Securities and Exchange Commission (the “S.E.C.”) brought this action against Lee Cohen on May 2, 2023, alleging Cohen’s involvement in a matched trading scheme that violated provisions of the Securities Act of 1933 (the “Securities Act”) and Securities and Exchange Act of 1934 (the “Exchange Act”).¹ (ECF No. 1.) On September 23, 2023, the S.E.C. effected personal service of the summons and complaint on Cohen at 154 Ember Lane, Esher, Surrey, England, United Kingdom.² On October 30, 2023, following the defendant’s failure to appear or otherwise defend this action, the S.E.C. requested that the Clerk of Court issue a certificate of

¹ The complaint alleges violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); Sections 9(a)(1), 9(a)(2), 10(b), and 15(a)(1) of the Exchange Act, 15 U.S.C. §§ 78i(a)(1), 78i(a)(2), 78j(b), and 78o(a)(1); and Rule 10b-5 of the Exchange Act, 17 C.F.R. § 240.10b-5. (ECF No. 1 at 14–16.)

² Because the defendant was incarcerated at the time, the S.E.C. initially attempted to serve the defendant on May 16, 2023, through coordination with the United States Marshals Service. (ECF No. 8; *see* ECF No. 11 (stating that the defendant completed his sentence on June 1, 2023).) Following entry of default, the defendant’s attorney from the corresponding criminal matter — who is not representing the defendant in this matter — sent a letter to the Court claiming that the defendant was never served. (ECF No. 11.) In an August 17, 2023 status report, the S.E.C. advised the Court that it was “no longer confident” that the defendant was effectively served on May 16, 2023, and that it planned to locate and serve the defendant properly. (ECF No. 13, at pp. 2–3.)

default. (ECF No. 16.) On November 7, 2023, the Clerk of Court entered the defendant's default. (ECF No. 17.)

On March 15, 2024, the S.E.C. filed a motion for default judgment. (ECF No. 21.) The Court referred the motion to Magistrate Judge Taryn A. Merkl, who issued a report and recommendation on August 16, 2024, recommending that the Court grant the S.E.C.'s motion for default judgment, grant the S.E.C.'s requested relief, and enter default against the defendant. (ECF No. 27.) Judge Merkl determined that Cohen's failure to respond or otherwise appear in this action was willful, his silence and criminal conviction for securities fraud show a lack of a meritorious defense, and that the S.E.C. would be unfairly prejudiced if the motion for default were denied. (*Id.* at 8–10.) Additionally, given the risk of recurrence and the severity of the conduct alleged in the complaint, Judge Merkl recommended granting the S.E.C.'s requested injunctive relief and penny stock bar. (*Id.* at 17–20). No party has filed an objection to the report and recommendation and the time for doing so has passed.

A district court reviewing a report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). To accept a report and recommendation to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *VOX Amplification Ltd. v. Meussdorffer*, 50 F. Supp. 3d 355, 369 (E.D.N.Y. 2014).

I have carefully reviewed Judge Merkl's thoughtful report and recommendation for clear error and find none. Accordingly, I adopt the report and recommendation in its entirety. The S.E.C.'s motion for default judgment is granted and the Clerk of Court is respectfully directed to enter the attached order and final default judgment.

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
September 4, 2024